

AMENDED IN SENATE JUNE 15, 2014

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY MAY 1, 2014

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1751

Introduced by Assembly Member Bloom

February 14, 2014

An act to amend Section 1771.8 of the Health and Safety Code, relating to continuing care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1751, as amended, Bloom. Continuing care retirement communities.

(1) Existing law provides for the regulation by the State Department of Social Services of activities relating to continuing care contracts that govern care provided to an elderly resident in a continuing care retirement community for the duration of the resident's life or a term in excess of one year. Existing law declares the Legislature's finding that the residents of continuing care retirement communities have a unique and valuable perspective on the operations of, and services provided in, the community in which they live and should have input into decisions made by the provider.

Existing law requires every continuing care retirement community provider to make available to the resident association or its governing body, or if neither exists, to a committee of residents, a financial statement of activities for that facility comparing actual costs to budgeted

costs broken down by expense category, not less than semiannually. Existing law also requires a provider to provide a copy of the annual report at a central and conspicuous location in the community. Under existing law, an entity that issues, delivers, or publishes, or as manager or officer or in any other administrative capacity, assists in the issuance, delivery, or publication of, any printed matter, oral representation, or advertising material that does not comply with the requirements of the law relating to continuing care contracts is guilty of a misdemeanor.

This bill would instead require the financial statement to be provided not less than quarterly, and would require it to include a written explanation of all significant budget variances. This bill would additionally require a provider to make a copy of the annual report available on its Internet Web site. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the governing body of a provider that is not part of a multifacility organization with more than one continuing care retirement community in the state to accept at least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the governing body. Existing law requires the governing body of a multifacility organization to elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every 3 California-based continuing care retirement communities or fraction thereof that the provider operates.

This bill would additionally require the governing body of all providers to accept at least one resident, or 2 residents for a governing body with 21 or more members, from the continuing care retirement community or communities it operates to participate as voting members of the provider's governing body, and would make other technical and conforming changes. The bill would require a resident member to be nominated to participate on the provider's governing body by the resident association or, if a resident association does not exist, a committee of residents, and would authorize the resident association or committee of residents to nominate multiple nominees from which the provider's governing body may approve a resident member. If the

governing body disapproves of the resident association's nominations, the bill would require the resident association or committee of residents to nominate additional resident members until the vacancy is filled. This bill would ~~also require~~ *authorize* a provider that ~~is part of a multifacility organization, if the organization~~ has at least one continuing care retirement community in the state and does not have a governing body within the state, ~~to state to, in lieu of appointing a resident to be a voting member of its governing body,~~ appoint a select committee of ~~its officers or partners governing body members~~ to meet with the resident association or a resident elected committee of residents, as specified, no less frequently than at a reasonable period prior to any regularly scheduled meeting of the governing body at each of its facilities in the state to address concerns of the residents and to ensure that the opinions of residents are relayed to ~~all of the officers or partners governing body members~~ of the provider.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1771.8 of the Health and Safety Code is
2 amended to read:
3 1771.8. (a) The Legislature finds and declares all of the
4 following:
5 (1) The residents of continuing care retirement communities
6 have a unique and valuable perspective on the operations of, and
7 services provided in, the community in which they live.
8 (2) Resident input into decisions made by the provider is an
9 important factor in creating an environment of cooperation,
10 reducing conflict, and ensuring timely response and resolution to
11 issues that may arise.
12 (3) Continuing care retirement communities are strengthened
13 when residents know that their views are heard and respected.
14 (b) The Legislature encourages continuing care retirement
15 communities to exceed the minimum resident participation

requirements established by this section by, among other things, the following:

(1) Encouraging residents to form a resident association, and assisting the residents, the resident association, and its governing body to keep informed about the operation of the continuing care retirement community.

(2) Encouraging residents of a continuing care retirement community or their elected representatives to select residents to participate as members of the governing body of the provider.

(3) Quickly and fairly resolving any dispute, claim, or grievance arising between a resident and the continuing care retirement community.

(c) The governing body of a provider, or the designated representative of the provider, shall hold, at a minimum, semiannual meetings with the residents of the continuing care retirement community, or the resident association or its governing body, for the purpose of the free discussion of subjects including, but not limited to, income, expenditures, and financial trends and issues as they apply to the continuing care retirement community and proposed changes in policies, programs, and services. This section does not preclude a provider from taking action or making a decision at any time, without regard to the meetings required under this subdivision.

(d) At least 30 days prior to the implementation of an increase in the monthly care fee, the designated representative of the provider shall convene a meeting, to which all residents shall be invited, for the purpose of discussing the reasons for the increase, the basis for determining the amount of the increase, and the data used for calculating the increase. This meeting may coincide with the semiannual meetings required in subdivision (c). At least 14 days prior to the meeting to discuss an increase in the monthly care fee, the provider shall make available to each resident or resident household comparative data showing the budget for the upcoming year, the current year's budget, and actual and projected expenses for the current year, and a copy shall be posted in a conspicuous location at each facility.

(e) The governing body of a provider or the designated representative of the provider shall provide residents with at least 14 days' advance notice of each meeting provided for in subdivisions (c) and (d), and shall permit residents attending the

1 meeting to present issues orally and in writing. The governing
2 body of a provider or the designated representative of the provider
3 shall post the notice of, and the agenda for, the meeting in a
4 conspicuous place in the continuing care retirement community
5 at least 14 days prior to the meeting. The governing body of a
6 provider or the designated representative of the provider shall make
7 available to residents of the continuing care retirement community
8 upon request the agenda and accompanying materials at least seven
9 days prior to the meeting.

10 (f) A provider shall make available to the resident association
11 or its governing body, or if neither exists, to a committee of
12 residents, a financial statement of activities for that facility
13 comparing actual costs to budgeted costs broken down by expense
14 category, not less than quarterly, with a written explanation of all
15 significant budget variances, and shall consult with the resident
16 association or its governing body, or, if neither exists, with a
17 committee of residents, during the annual budget planning process.
18 The effectiveness of consultations during the annual budget
19 planning process shall be evaluated at a minimum every two years
20 by the continuing care retirement community administration. The
21 evaluation, including any policies adopted relating to cooperation
22 with residents, shall be made available to the resident association
23 or its governing body, or, if neither exists, to a committee of
24 residents at least 14 days prior to the next semiannual meeting of
25 residents and the provider's governing body provided for in
26 subdivision (c), and a copy of the evaluation shall be posted in a
27 conspicuous location at each facility.

28 (g) A provider shall, within 10 days after the annual report
29 required pursuant to Section 1790 is submitted to the department,
30 provide, at a central and conspicuous location in the community
31 and in a conspicuous location on the provider's Internet Web site,
32 a copy of the annual report, including the multifacility statement
33 of activities and a copy of the annual audited financial statement,
34 but excluding personal confidential information.

35 (h) A provider shall maintain, as public information, available
36 upon request to residents, prospective residents, and the public,
37 minutes of the meetings held by the provider's governing body
38 and shall retain these records for at least three years from the date
39 the records were filed or issued.

1 (i) ~~The~~ Except as provided in subdivision (s), the governing
2 body of a provider that is not part of a multifacility organization
3 with more than one continuing care retirement community in the
4 state shall accept both of the following:

5 (1) At least one resident of the continuing care retirement
6 community it operates to participate as a nonvoting resident
7 representative to the provider's governing body.

8 (2) At least one resident, or two residents for a governing body
9 with 21 or more members, of the continuing care retirement
10 community it operates to participate as a voting member of the
11 provider's governing body. A provider's governing body shall not
12 be required to meet the requirements of this paragraph until there
13 is a vacancy on the provider's governing body or upon the next
14 regularly scheduled selection of the provider's governing body
15 occurring on or after January 1, 2015. A resident member shall
16 perform his or her duties in a manner that complies with the
17 standards of conduct and fiduciary duties of all other members of
18 the governing board.

19 (j) ~~In~~ Except as provided in subdivision (s), in a multifacility
20 organization having more than one continuing care retirement
21 community in the state, the governing body of the multifacility
22 organization shall do both of the following:

23 (1) Elect either to have at least one nonvoting resident
24 representative to the provider's governing body for each
25 California-based continuing care retirement community the
26 provider operates or to have a resident-elected committee composed
27 of representatives of the residents of each California-based
28 continuing care retirement community that the provider operates
29 select or nominate at least one nonvoting resident representative
30 to the provider's governing body for every three California-based
31 continuing care retirement communities, or fraction thereof, that
32 the provider operates. If a multifacility organization elects to have
33 one representative for every three communities that the provider
34 operates, the provider shall provide to the president of the residents
35 association of each of the communities that do not have a resident
36 representative the same notice of meetings, packets, minutes, and
37 other materials as the resident representative. At the reasonable
38 discretion of the provider, information related to litigation,
39 personnel, competitive advantage, or confidential information that
40 is not appropriate to disclose, may be withheld.

1 (2) (A) Elect to have at least one resident, or two residents for
2 a governing body with 21 or more members, from any of the
3 continuing care retirement communities it operates to participate
4 as voting members of the provider's governing body. A provider's
5 governing body shall not be required to meet the requirements of
6 this subparagraph until there is a vacancy on the provider's
7 governing body or upon the next regularly scheduled selection of
8 the provider's governing body occurring on or after January 1,
9 2015. A resident member shall perform his or her duties in a
10 manner that complies with the standards of conduct and fiduciary
11 duties of all other members of the governing board.

12 (B) If there are communities that do not have a resident from
13 the community as a voting member of the provider's governing
14 body, the provider shall provide to the president of the resident
15 association of each of those communities the same notice of
16 meetings, packets, minutes, and other materials as the resident
17 voting members. At the reasonable discretion of the provider,
18 information related to litigation, personnel, competitive advantage,
19 or confidential information that is not appropriate to disclose may
20 be withheld.

21 (k) In order to encourage innovative and alternative models of
22 resident involvement, residents selected pursuant to paragraph (1)
23 of subdivision (i) or paragraph (1) of subdivision (j) to participate
24 as a resident representative to the provider's governing body may,
25 at the option of the resident association, be selected in any one of
26 the following ways:

27 (1) By a majority vote of the resident association of a provider
28 or by a majority vote of a resident-elected committee of residents
29 of a multifacility organization.

30 (2) If no resident association exists, any resident may organize
31 a meeting of the majority of the residents of the continuing care
32 retirement community to select or nominate residents to represent
33 them on the governing body.

34 (3) Any other method designated by the resident association.

35 (l) A resident member of the provider's governing body selected
36 pursuant to paragraph (2) of subdivision (i) or paragraph (2) of
37 subdivision (j) shall be nominated to participate on the provider's
38 governing body by the resident association or, if a resident
39 association does not exist, a committee of residents. The resident
40 association or committee of residents may nominate multiple

1 nominees from which the provider's governing body may approve
2 a resident member. If the governing body disapproves of the
3 resident association's nominations, the resident association or the
4 committee of residents shall nominate additional resident members
5 for the governing body's approval or disapproval until the vacancy
6 is filled.

7 (m) The resident association, organizing resident, or, in the case
8 of a multifacility organization, the resident-elected committee of
9 residents, shall give residents of the continuing care retirement
10 community at least 30 days' advance notice of the meeting to select
11 a resident representative and resident members of the governing
12 body and shall post the notice in a conspicuous place at the
13 continuing care retirement community.

14 (n) (1) Except as provided in subdivision (o), resident
15 representatives shall receive the same notice of meetings, packets,
16 minutes, and other materials as members of the provider's
17 governing body and shall be permitted to attend, speak, and
18 participate in all meetings of the governing body.

19 (2) Resident representatives may share information from
20 meetings with other residents, unless the information is confidential
21 or doing so would violate fiduciary duties to the provider. A
22 resident representative shall be permitted to attend meetings of the
23 governing body committee or committees that review the annual
24 budget of the facility or facilities and recommend increases in
25 monthly care fees. The resident representative shall receive the
26 same notice of meetings, information, packets, minutes, and other
27 materials as committee members, and shall be permitted to attend,
28 speak, and participate in the committee meetings. Resident
29 representatives shall perform their duties in good faith and with
30 such care, including reasonable inquiry, as an ordinarily prudent
31 person in a like position would use under similar circumstances.

32 (o) Notwithstanding subdivision (n), the provider's governing
33 body may exclude resident representatives from its executive
34 sessions and from receiving meeting materials to be discussed
35 during executive session. However, resident representatives shall
36 be included in executive sessions and shall receive all meeting
37 materials to be discussed during executive sessions related to
38 discussions of the annual budgets, increases in monthly care fees,
39 indebtedness, and expansion of new and existing continuing care
40 retirement communities.

1 (p) The provider shall pay all reasonable travel costs for resident
2 representatives and resident members of the governing body.

3 (q) The provider shall disclose in writing the extent of resident
4 involvement with the governing body to prospective residents.

5 (r) A provider is not prohibited from exceeding the minimum
6 resident participation requirements of this section by, for example,
7 having more resident meetings, more resident representatives or
8 resident members of the governing body to the provider's
9 governing body than required, or by having one or more residents
10 on the provider's governing body who are selected with the active
11 involvement of residents.

12 (s) If a ~~multifacility organization~~ *provider* having at least one
13 continuing care retirement community in the state does not have
14 a governing body within the state, the provider shall, *in lieu of*
15 *appointing a voting member pursuant to subdivision (i) or (j),*
16 *appoint a select committee of its officers and partners governing*
17 *body members* to meet pursuant to paragraph (6) of subdivision
18 (a) of Section 307 of the Corporations Code, *or in a location that*
19 *has been designated in the notice of the meeting,* with the resident
20 association or a resident-elected committee of residents no less
21 frequently than a reasonable period prior to any regularly scheduled
22 meeting of the governing body at each of its facilities in the state
23 to address concerns of the residents and to ensure that the opinions
24 of residents are relayed to all ~~officers or partners governing body~~
25 *members* of the provider.

26 SEC. 2. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.